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Attorneys for Complainant

**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

NEIL ALLEN SILVERIO  
1374 Weaverville St.  
Chula Vista, CA 91913

Respondent.

Case No. 1H-2008-204

OAH No.

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the  
above-entitled proceedings that the following matters are true:

**PARTIES**

1. Stephanie Nunez (Complainant) is the Executive Officer of the  
Respiratory Care Board of California. She brought this action solely in her official capacity and  
is represented in this matter by Edmund G. Brown Jr., Attorney General of the State of  
California, by Douglas Lee, Deputy Attorney General.

2. Respondent NEIL ALLEN SILVERIO (Respondent) is representing  
himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about April 7, 2008, Respondent filed an application dated January  
29, 2008, with the Respiratory Care Board to obtain a Respiratory Care Practitioner License.

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CONTINGENCY

10. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

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1. RESTRICTION OF PRACTICE Respondent may not be employed or function as a member of a respiratory care management or supervisory staff during the entire length of probation. This includes lead functions.

Respondent is prohibited from working for a registry.

For the period covering January 1<sup>st</sup> through March 31<sup>st</sup>, reports are to be completed and submitted between April 1<sup>st</sup> and April 7<sup>th</sup>. For the period covering April 1<sup>st</sup> through June 30<sup>th</sup>, reports are to be completed and submitted between July 1<sup>st</sup> and July 7<sup>th</sup>. For the period covering July 1<sup>st</sup> through September 30<sup>th</sup>, reports are to be completed and submitted between October 1<sup>st</sup> and October 7<sup>th</sup>. For the period covering October 1<sup>st</sup> through December 31<sup>st</sup>, reports are to be completed and submitted between January 1<sup>st</sup> and January 7<sup>th</sup>.

3. OBEY ALL LAWS Respondent shall obey all laws, whether federal, state, or local. Respondent shall also obey all regulations governing the practice of respiratory care in California.

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1                   4.     QUARTERLY REPORTS   Respondent shall file quarterly reports of  
2 compliance under penalty of perjury, on forms to be provided to the probation monitor assigned  
3 by the Board. Omission or falsification in any manner of any information on these reports shall  
4 constitute a violation of probation and shall result in the filing of an accusation and/or a petition  
5 to revoke probation against Respondent's respiratory care practitioner license.

6                   Quarterly report forms will be provided by the Board. Respondent is responsible  
7 for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each  
8 year of probation and the entire length of probation as follows:

9                   For the period covering January 1<sup>st</sup> through March 31<sup>st</sup>, reports are to be  
10 completed and submitted between April 1<sup>st</sup> and April 7<sup>th</sup>. For the period covering April 1<sup>st</sup>  
11 through June 30<sup>th</sup>, reports are to be completed and submitted between July 1<sup>st</sup> and July 7<sup>th</sup>. For  
12 the period covering July 1<sup>st</sup> through September 30<sup>th</sup>, reports are to be completed and submitted  
13 between October 1<sup>st</sup> and October 7<sup>th</sup>. For the period covering October 1<sup>st</sup> through December 31<sup>st</sup>,  
14 reports are to be completed and submitted between January 1<sup>st</sup> and January 7<sup>th</sup>.

15                  Failure to submit complete and timely reports shall constitute a violation of  
16 probation.

17                  5.     PROBATION MONITORING PROGRAM   Respondent shall comply  
18 with requirements of the Board appointed probation monitoring program, and shall, upon  
19 reasonable request, report to or appear to a local venue as directed.

20                  Respondent shall claim all certified mail issued by the Board, respond to all  
21 notices of reasonable requests timely, and submit Annual Reports, Identification Update reports  
22 or other reports similar in nature, as requested and directed by the Board or its representative.

23                  Respondent is encouraged to contact the Board's Probation Program at any time  
24 he has a question or concern regarding his terms and conditions of probation.

25                  Failure to appear for any scheduled meeting or examination, or cooperate with the  
26 requirements of the program, including timely submission of requested information, shall  
27 constitute a violation of probation and will result in the filing of an accusation and/or a petition to  
28 revoke probation against Respondent's respiratory care practitioner license.

1                   6.     PROBATION MONITORING COSTS All costs incurred for probation  
2 monitoring during the entire probation shall be paid by the Respondent. The monthly cost may  
3 be adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms  
4 and conditions may also cause this amount to be increased.

5                   All payments for costs are to be sent directly to the Respiratory Care Board and  
6 must be received by the date(s) specified. (Periods of tolling will not toll the probation  
7 monitoring costs incurred.)

8                   If Respondent is unable to submit costs for any month, he shall be required instead  
9 to submit an explanation of why he is unable to submit the costs, and the date(s) he will be able  
10 to submit the costs including payment amount(s). Supporting documentation and evidence of  
11 why the Respondent is unable to make such payment(s) must accompany this submission.

12                  Respondent understands that failure to submit costs timely is a violation of  
13 probation and submission of evidence demonstrating financial hardship does not preclude the  
14 Board from pursuing further disciplinary action. However, Respondent understands providing  
15 evidence and supporting documentation of financial hardship may delay further disciplinary  
16 action.

17                  In addition to any other disciplinary action taken by the Board, an unrestricted  
18 license will not be issued at the end of the probationary period and the respiratory care  
19 practitioner license will not be renewed, until such time all probation monitoring costs have been  
20 paid.

21                  The filing of bankruptcy by Respondent shall not relieve the Respondent of his  
22 responsibility to reimburse the Board for costs incurred.

23                   7.     EMPLOYMENT REQUIREMENT Respondent shall be employed a  
24 minimum of 24 hours per week as a respiratory care practitioner for a minimum of 2/3 of his  
25 probation period.

26                  Respondent may substitute successful completion of a minimum of thirty (30)  
27 additional continuing education hours, beyond that which is required for license renewal, for  
28 each 8 months of employment required. Respondent shall submit proof to the Board of

1 successful completion of all continuing education requirements. Respondent is responsible for  
2 paying all costs associated with fulfilling this term and condition of probation.

3           8.     NOTICE TO EMPLOYER Respondent shall be required to inform his  
4 employer, and each subsequent employer during the probation period, of the discipline imposed  
5 by this decision by providing his supervisor and director and all subsequent supervisors and  
6 directors with a copy of the decision and order, and the Statement(s) of Issues or Accusation(s) in  
7 this matter prior to the beginning of or returning to employment or within 14 days from each  
8 change in a supervisor or director.

9           If Respondent is employed by or through a registry [and is not restricted from  
10 working for a registry], Respondent shall make each hospital or establishment to which he is sent  
11 aware of the discipline imposed by this decision by providing his direct supervisor and  
12 administrator at each hospital or establishment with a copy of this decision, and the Statement(s)  
13 of Issues or Accusation(s) in this matter prior to the beginning of employment. This must be  
14 done each time there is a change in supervisors or administrators.

15           The employer will then inform the Board, in writing, that he is aware of the  
16 discipline, on forms to be provided to the Respondent. Respondent is responsible for contacting  
17 the Board to obtain additional forms, if needed. All reports completed by the employer must be  
18 submitted from the employer directly to the Board.

19           Respondent shall execute a release authorizing the Board or any of its  
20 representatives to review and obtain copies of all employment records and discuss and inquire of  
21 the probationary status with any of Respondent's supervisors or directors.

22           9.     CHANGES OF EMPLOYMENT OR RESIDENCE Respondent shall  
23 notify the Board, and appointed probation monitor, in writing, of any and all changes of  
24 employment, location, and address within 14 days of such change. This includes, but is not  
25 limited to, applying for employment, termination or resignation from employment, change in  
26 employment status, change in supervisors, administrators or directors.

27           Respondent shall also notify his probation monitor AND the Board IN WRITING  
28 of any changes of residence or mailing address within 14 days. P.O. Boxes are accepted for

1 mailing purposes, however the Respondent must also provide his physical residence address as  
2 well.

3           10.     SURRENDER OF LICENSE Following the effective date of this  
4 decision, if Respondent ceases practicing due to retirement, health reasons or is otherwise unable  
5 to satisfy the terms and conditions of probation, he may request the voluntary surrender of his  
6 license. The Board reserves the right to evaluate Respondent's request and to exercise its  
7 discretion whether or not to grant the request or to take any other action deemed appropriate and  
8 reasonable under the circumstances. Upon formal acceptance of the surrender, within 15  
9 calendar days Respondent shall deliver his wallet and wall certificate to the Board or its designee  
10 and he shall no longer practice respiratory care. Respondent will no longer be subject to the  
11 terms and conditions of probation and the surrender of Respondent's license shall be deemed  
12 disciplinary action. If Respondent re-applies for a respiratory care license, the application shall  
13 be treated as a petition for reinstatement of a revoked license.

14           11.     COST RECOVERY Respondent shall pay to the Board a sum not to  
15 exceed the costs of the investigation and prosecution of this case. That sum shall be \$1,300.00,  
16 and shall be paid in full directly to the Board, in equal quarterly payments, within 12 months  
17 from the effective date of this decision. Cost recovery will not be tolled.

18           If Respondent is unable to submit costs timely, he shall be required instead to  
19 submit an explanation of why he is unable to submit these costs in part or in entirety, and the  
20 date(s) he will be able to submit the costs including payment amount(s). Supporting  
21 documentation and evidence of why the Respondent is unable to make such payment(s) must  
22 accompany this submission.

23           Respondent understands that failure to submit costs timely is a violation of  
24 probation, and submission of evidence demonstrating financial hardship does not preclude the  
25 Board from pursuing further disciplinary action. However, Respondent understands that  
26 providing evidence and supporting documentation of financial hardship may delay further  
27 disciplinary action.

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1                   Consideration to financial hardship will not be given should Respondent violate  
2 this term and condition, unless an unexpected AND unavoidable hardship is established from the  
3 date of this order to the date payment(s) is due.

4                   The filing of bankruptcy by the Respondent shall not relieve the Respondent of his  
5 responsibility to reimburse the Board for these costs.

6                   12.    TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE   Periods  
7 of residency or practice outside California, whether the periods of residency or practice are  
8 temporary or permanent, will toll the probation period, but will not toll the cost recovery  
9 requirement, nor the probation monitoring costs incurred. Travel out of California for more than  
10 30 days must be reported to the Board in writing prior to departure. Respondent shall notify the  
11 Board, in writing, within 14 days, upon his return to California and prior to the commencement  
12 of any employment where representation as a respiratory care practitioner is/was provided.

13                  13.    VALID LICENSE STATUS   Respondent shall maintain a current, active  
14 and valid license for the length of the probation period. Failure to pay all fees and meet  
15 Continuing Education requirements prior to his license expiration date shall constitute a violation  
16 of probation.

17                  14.    VIOLATION OF PROBATION   If Respondent violates any term of the  
18 probation in any respect, the Board, after giving Respondent notice and the opportunity to be  
19 heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to  
20 revoke probation is filed against Respondent during probation, the Board shall have continuing  
21 jurisdiction and the period of probation shall be extended until the matter is final. No petition for  
22 modification of penalty shall be considered while there is an accusation or petition to revoke  
23 probation or other penalty pending against Respondent.

24                  15.    COMPLETION OF PROBATION   Upon successful completion of  
25 probation, Respondent's license shall be fully restored.

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ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Respiratory Care Practitioner License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Respiratory Care Board.  
DATED: September 1, 2008.

Original signed by: \_\_\_\_\_  
NEIL ALLEN SILVERIO  
Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Respiratory Care Board of the Department of Consumer Affairs.  
DATED: September 5, 2008

EDMUND G. BROWN JR., Attorney General  
of the State of California  
  
STEVEN V. ADLER  
Supervising Deputy Attorney General

Original signed by: \_\_\_\_\_  
DOUGLAS LEE  
Deputy Attorney General  
  
Attorneys for Complainant

**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

NEIL ALLEN SILVERIO  
1374 Weaverville St.  
Chula Vista, CA 91913

Respondent.

Case No. 1H-2008-204

OAH No.

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Respiratory Care Board, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on November 10, 2008.

It is so ORDERED October 28, 2008.

Original signed by: \_\_\_\_\_

LARRY L. RENNER, BS, RRT, RCP, RPFT  
PRESIDENT, RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA